

WASHINGTON, DC -- Congresswoman Linda Sánchez, Chairwoman of the House Judiciary Subcommittee on Commercial and Administrative Law (CAL), issued the following opening statement today at the CAL Subcommittee legislative hearing on H.R. 6126, the "Fairness in Nursing Home Arbitration Act of 2008."

"During this Congress, this Subcommittee has held four hearings on issues and legislation related to the Federal Arbitration Act. We have heard from attorneys, professors, and individuals about unfortunate experiences with the arbitration process.

"Erika Rice, a witness from our auto arbitration hearing, described her troubling situation of trying to remedy the purchase of a faulty car from an automobile dealer. Jordan Fogal, a witness from our consumer hearing, thought she had purchased her dream home, which turned out to be poorly constructed nightmare and a legal headache to repair.

"And Deborah Williams, a witness from one of our legislative hearings, testified that while she thought she had a bright future after purchasing a Coffee Beanery Franchise, the extreme contractual requirements she could not afford to meet resulted in her losing the franchise and landing in financial ruin.

"Although Ms. Rice, Ms. Fogal, and Ms. Williams initially experienced emotional distress during their predicaments, it was in seeking a cure to their problem that they experienced financial suffering. Each learned that mandatory arbitration agreements can disadvantage consumers and franchise owners and make their hope of a fair resolution nearly impossible.

"Sadly, the mandatory arbitration clauses in their contracts prevented them from regaining their previous financial stability, and with it, their emotional security.

"Unfortunately, the inclusion of arbitration clauses in long-term care facility contracts is even more emotionally heartbreaking. By 2040 the demand for long term care services will more than double. The long-term care industry is increasingly including pre-dispute arbitration clauses in its take-it-or-leave-it admission agreements for prospective residents.

"And for desperate families who are unable to provide adequate care in the home setting, the need for an immediate placement for their loved one makes the "take-it-or-leave-it" choice, no choice at all.

"Families who are in the midst of the heartbreaking decision to place a parent in a nursing home rarely have the time or wherewithal to fully and thoughtfully consider mandatory arbitration clauses. Simply dealing with the emotional and traumatic process of searching for a long term care facility makes it impossible for residents and their families to worry about the potential loss of their Constitutional right to a jury trial. What's real and immediate is not some future dispute but proper care of a loved one.

"The emotional toll and the sense of vulnerability when moving a loved one into the care of strangers at a nursing home is something I am all too familiar with. My father, who has been diagnosed with Alzheimer's, was recently placed into a nursing home, and one of the last things

I wanted to worry about when searching for that perfect placement was whether he was forgoing his legal rights. Instead, I wanted to focus solely on the quality and range of services the facility would provide him. As it turned out, my family chose a facility that met our requirements but also had a mandatory arbitration clause in its contract.

"I want to be clear that I am completely supportive of the principles of arbitration and the arbitration process. However, the process should remain fair. Parties to a contract should have the option to choose whether or not they arbitrate their disputes.

"For these reasons, I introduced H.R. 6126, the "Fairness in Nursing Home Arbitration Act of 2008," to make pre-dispute, mandatory arbitration clauses in long-term care contracts unenforceable and to restore to residents and their families their full legal rights. This legislation would allow families and residents to maintain their peace of mind as they look for that perfect long-term care facility.

"I am proud to note that H.R. 6126 is supported by several significant groups who advocate on behalf of seniors and consumers, including the AARP, which is providing a witness at this afternoon's hearing, the National Senior Citizens Law Center, the Alzheimer's Association, and the National Association for Consumer Advocates. Additionally, Senators Mel Martinez and Herb Kohl have introduced a similar bill in the Senate, S. 2838."